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January 8, 2016

**VIA ELECTRONIC FILING**

Honorable Charles R. Breyer  
United States District Court for the Northern District of California  
450 Golden Gate Avenue  
San Francisco, CA 94102

Re: *In Re: Volkswagen "Clean Diesel" Marketing, Sales Practices & Products Liability Litigation*

Dear Judge Breyer,

Please accept this letter as my application for appointment to a position as either co-lead counsel for Plaintiffs who owned or leased an affected vehicle or, alternatively, for appointment to one of the steering committees working on behalf of vehicle owners. Our firm, along with co-counsel Smith & McElwain and Davis George Mook, LLC, were approved by the Office of the Attorney General for the State of Iowa to pursue a class-action complaint under the Iowa Consumer Frauds Act in the matter of *Gall et al. v Volkswagen Group of America, Inc. et al.* that was transferred to this Court from the United States District Court for the Southern District of Iowa. We, along with co-counsel, also have pending in this Court a putative class-action complaint that was filed in the United States District Court for the Western District of Missouri in *Erickson et al. v. Volkswagen Group of America, Inc.*

By way of background, I graduated from the University of Michigan Law School in 1982. I have been with my current law firm since 1985 where I have enjoyed a diverse trial law practice in areas such as asbestos litigation (property diminution and personal injury), class action litigation (property damage, consumer protection, and employment discrimination), tobacco litigation (personal injury claims and governmental claims for reimbursement of medical expenses), toxic torts (our firm literally pioneered litigation involving workers who developed "popcorn lung" from exposure to the butter flavoring diacetyl used in foods such as microwave popcorn) and general negligence or products liability personal injury claims. Included in these cases are a number of large scale and multiple-plaintiff consolidated actions.

For example, recently I was successful in coordinating settlement of more than 200 personal injury cases that were pending in the United States Bankruptcy Court for the District of Delaware in the matter of *In Re: Blitz U.S.A., Inc. et al.*, pending before the Honorable Peter J. Walsh (retired) of the United States Bankruptcy Court for the District of Delaware, 824 Market

Street N., 3<sup>rd</sup> Floor, Wilmington, DE 19801; (302) 252-2900. Within approximately nine months of becoming involved in *Blitz*, I crafted resolution of a vast number of cases involving complex issues of both liability and damages. The full amount of the *Blitz* settlement exceeded \$200 million. Bringing these cases to conclusion was possible because of my ability to work not only with co-counsel representing the injured persons and families – but also because I have the proven ability to work with opposing counsel to craft settlements beneficial to my clients.

In terms of class action litigation, I served as lead counsel in several matters including *Williams et al. v. Sprint/United Management Co.* and *Maude et al. v. The Prudential Insurance Co.* The *Williams* case, which was pending before the Honorable John Lungstrum of the United States District Court for the District of Kansas, 500 State Avenue, Suite 517, Kansas City, KS 66101; (913) 735-2320, involved nearly 1,700 workers claiming age discrimination and resulted in a settlement of \$57 million in relief paid to the class (this amount does not include attorney fees). Again, in resolving the claims in *Williams*, I worked cooperatively with co-counsel and opposing counsel to fashion a settlement beneficial to my clients that also ensured retirement and pension benefits were unaffected by the settlement reached. In *Maude*, I appeared before the Honorable Scott O. Wright of the United States District Court for the Western District of Missouri, 400 W. 9<sup>th</sup> Street, Room 8662, Kansas City, MO 64106; (816) 512-5744.

I have litigated numerous cases with complicated issues regarding diminution of value in property. In 1993, my firm obtained a \$19.7 million verdict for costs associated with asbestos abatement and removal for owners of the Northstar Center in Minneapolis, MN. The Northstar Building case was before the late Honorable Robert G. Renner of the United States District Court for the District of Minnesota. Similarly, I obtained a \$90 million verdict for damages resulting from PCB contamination in the Pennsylvania Transportation & Safety Building in Harrisburg, PA. The PennDOT case was presided over by the late Honorable Charles P. Mirarchi, Jr. On re-trial the PennDot case was before the Honorable Robert Simpson, Commonwealth Court of Pennsylvania, 601 Commonwealth Ave., Suite 1500, Harrisburg, PA 17120; (717) 255-1650. In 1999, in *Petrovic v. Amoco Oil Co.* our firm negotiated a settlement for local Missouri property owners for pollution caused by an oil refinery, which provided payment far in excess of the fair-market value of the property. *Petrovic* was presided over by the Honorable Fernando J. Gaitan, Jr., of the United States District Court for the Western District of Missouri, 400 E. 9<sup>th</sup> Street, Room 7552, Kansas City, MO 64106; (816) 512-5630.

In connection with toxic tort cases, I have been responsible for settling claims on behalf of many large groups of individuals suffering from lung disease resulting from exposure to diacetyl in the workplace. The two largest groups were claims in bankruptcy court involving Chemtura Corporation (more than 225 individuals) and Polarome Corporation (involving more than 300 different workers). *In Re: Chemtura Corp.*, which settled for \$50 million, was pending before the Honorable Robert E. Gerber of the United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, NY 10004; (212) 668-5660. In the Polarome bankruptcy I appeared before the Honorable Rosemary Gambardella, United States Bankruptcy Court for the District of New Jersey, 50 Walnut Street, 3<sup>rd</sup> Floor, Newark, NJ 07102; (973) 645-2326. In addition, I have successfully negotiated settlements for two different groups of more than 150 workers each against two different flavoring manufacturers using diacetyl in their products.

Finally, I also worked on behalf of both individuals and government entities in cases against the tobacco industry. In 1997, I reached the very first settlement on behalf of a cigarette smoker in the case of Janet Sackman (the former poster model for Lucky Strike cigarettes). In the *Sackman* case I appeared before the Honorable Arthur D. Spatt of the United States District Court for the Eastern District of New York, 100 Federal Plaza, Central Islip, NY 11722; (631) 712-5620. In addition, I was one of four attorneys employed by the State of Missouri to prosecute, and ultimately settle, claims on behalf of the state for medical expenses incurred for treatment of smoking-related illness. Currently, I represent the Province of Newfoundland and Labrador, Canada, prosecuting its claim against the tobacco industry to be reimbursed for medical expenses incurred due to smoking-related illness. The Newfoundland and Labrador tobacco litigation is presided over by Justice William H. Goodridge, Supreme Court of Newfoundland and Labrador, 309 Duckworth Street, Stn. C, St. John's, Newfoundland and Labrador A1C 5M3; (709) 729-1137. My work on behalf of the Newfoundland and Labrador government required that I become a member of the Canadian bar. As a result, I sat for – and passed – the Canadian bar examination. In 2013, I was admitted to the bars of Newfoundland, Labrador, Manitoba, and Ontario.

In addition to successfully settling claims on behalf of my clients, I have received numerous verdicts in excess of \$20 million for claims of individual personal injury. While the claims in this case do not involve loss of life or catastrophic injury, my experience in trial against the best defense firms throughout the nation is relevant to my qualification to serve in a leadership position in this case. Experience has shown that the best settlements are achieved when the parties realize trial by an outstanding attorney is the alternative.

Our firm is well-suited to support my role in either a lead counsel or steering committee position. We are fortunate to have 13 attorneys in our litigation section. While I have now been at this firm for thirty years, two of my litigation partners have been with our office for more than 25 years and two more have been with the firm for more than 10 years. We have more than 18 support staff, including paralegals, litigation assistants and legal assistants. Financially we are well-positioned to support this litigation. Our firm regularly handles complex cases to which we provide tremendous financial resources. We are willing and able to apply our resources of talent and capital to the *Volkswagen* cases as well.

Please review my attached resume for additional information concerning my professional experience. Also attached is a list of attorneys involved in this MDL who support my application. I look forward to the opportunity to serve in this instance.

Sincerely yours,

Kenneth B. McClain

## **ATTACHMENT 1**

### **RESUME OF KENNETH B. McCLAIN**

*Kenneth B. McClain*  
*Humphrey, Farrington & McClain, P.C.*  
*221 W. Lexington, Suite 400*  
*Independence, MO 64050*

Kenneth B. McClain is a nationally recognized trial lawyer and a shareholder in the Independence, Missouri law firm of Humphrey, Farrington & McClain. He has practiced law since 1982, and joined his current firm in 1985. He received his law degree from the University of Michigan, where he served as an editor of the *Journal of Law Reform*. Ken has obtained top 100 verdicts in the country multiple times. He specializes in complex toxic and mass tort litigation. Since 1986, Ken has been awarded verdicts and has negotiated settlements totaling more than \$1,000,000,000 on behalf of clients throughout the nation.

Ken McClain is one of the pioneers of tobacco litigation in the United States. In 1997, he settled the first individual tobacco tort action in New York for Janet Sackman, former Lucky Strike poster model. Ken has been instrumental in achieving rulings against the tobacco industry in which cigarette companies were ordered to turn over documents which had been withheld as privileged and confidential for decades. Ken also represents workers from various popcorn and snack food plants who suffer from a variety of lung diseases after being exposed to butter flavoring on the job. The first of these cases went to trial in 2004 and resulted in a \$20,000,000 verdict. Additional cases have been tried, resulting in verdicts of \$15,000,000, \$7,550,000, \$15,000,000, \$2,700,000 and \$32,000,000.

In 2008, Ken was lead attorney in the record setting tractor-trailer collision wrongful death trial, *Garrett vs. Centra*. Multiple members of a family were killed. The jury awarded 15,000,000 on behalf of some of the deceased family members. Additional family members went to trial in 2010 in the case of *Gibbs v. Centra* and that jury awarded more than \$35,000,000 to survivors of others killed in the collision.

Ken McClain is actively involved in the improvement of his local community. His real estate development projects include residential developments, several restaurants and an inn, the renewal of the historic Harry Truman neighborhood corridor and a commercial and retail district which has restored more than twenty century-old buildings on the Independence Square. He contributes time and resources to causes important to him. In addition to his law practice and his civic and development activities, Ken is the Chairman of the Board of Trustees of his alma mater, Graceland University, a member of the Board of Directors of the Missouri State Historical Society, an elder in his church, husband of thirty-two years and delighted father of six.

**ATTACHMENT 2**

**COUNSEL SUPPORTING APPLICATION  
OF KENNETH B. McCLAIN**

The following attorneys have stated that they support the application of Kenneth B. McClain to a position as co-lead counsel for Plaintiffs or as a member of a steering committee working on behalf of Plaintiffs:

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